

REPRESENTATIVE FOR PETITIONER:
Carla Higgins, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

KeyBank #2590,)	Petition Nos.: See attached
)	
Petitioner,)	Parcel Nos.: See attached
)	
vs.)	Madison County
)	
Madison County Assessor,)	Monroe Township
)	
Respondent.)	Assessment Years: 2011, 2012, 2013 and 2014

Appeal from the Final Determinations of the
Madison County Property Tax Assessment Board of Appeals

June 23, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The Respondent accepted the burden of proof and conceded the 2011-2014 assessments should be reduced to the 2010 level. The Petitioner sought a lower assessment. Did the Petitioner prove it was entitled to a further reduction?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2011, 2012, 2013 and 2014 assessment appeals with the Madison County Assessor for three related parcels denoted on the attached listing. On various dates, the Madison County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations.¹ The Petitioner filed twelve Petitions for Review of Assessment (Form 131s) with the Board for the above mentioned assessment years.
3. On March 28, 2017, the Board's administrative law judge (ALJ), Joseph Stanford, held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Carla Higgins appeared for the Petitioner and was sworn as a witness. Attorney Brian Cusimano appeared for the Respondent. Anthony Garrison, a vendor for the County Assessor, was sworn as a witness for the Respondent but did not testify. Additionally, Lesley Middleton of the County Assessor's office was present to observe the hearing but she was not sworn and did not testify.
5. The Petitioner offered the following exhibits:

Petitioner Exhibit A:	Twelve Form 131s with attachments,
Petitioner Exhibit B:	A spreadsheet and "screen prints" from the Assessor's website indicating the various assessed values,
Petitioner Exhibit C:	"Broker Opinion of Value" prepared by Terri Brenner, Casual LifeStyles Realty Inc., dated November 2014,
Petitioner Exhibit D:	Purchase and Sale Agreement for the subject property,
Petitioner Exhibit E:	Closing Statement for the subject property dated January 14, 2016.
6. The Respondent offered the following exhibit:

¹ According to Ms. Higgins, the PTABOA did not issue a determination regarding the Petitioner's 2012 appeal for parcel no. 48-05-24-101-118.000-022 (pet. no. 48-022-12-1-4-20516-15). The Respondent did not dispute Ms. Higgins' claim. Pursuant to Ind. Code § 6-1.1-15-1(k) and (n) (requiring the PTABOA to hold a hearing not later than 180 days after a taxpayer files notice for review, and to issue a decision not more than 120 days after the hearing) the Petitioner exercised its option to file a Form 131 petition with the Board. Ind. Code § 6-1.1-15-1(o) (allowing a taxpayer to appeal to the Board after the maximum time for the PTABOA to hold a hearing and issue a decision elapses). For the remaining eleven petitions before the Board, the PTABOA issued determinations.

Respondent Exhibit 1: International Association of Assessing Officers (IAAO)
Standard on Ratio Studies – 2013 pages 49 and 50.

7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 131s with attachments,
Board Exhibit B: Hearing notices dated February 3, 2017,
Board Exhibit C: Hearing sign-in sheet with parcel and petition listing,
Board Exhibit D: Notice of Appearance for Marilyn S. Meighen, Brian A.
Cusimano, and Heather Ann Scheel.²

8. The various parcels under appeal are located at 111 North Harrison in Alexandria. The parties agree that collectively the parcels form one economic unit. Thus, unless otherwise indicated, the Board will refer to the parcels together as “the subject property.”

9. Collectively, the PTABOA determined the following total assessments:

2011	\$263,200
2012	\$245,900
2013	\$247,200
2014	\$247,200

10. As previously stated, the Respondent conceded the total assessment for each year under appeal should revert to the 2010 total assessment of \$234,800, but the Petitioner is requesting an “undefined” lower total assessment.

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

² Carla Higgins (formerly Carla Bishop) filed a copy of her Power of Attorney with each Form 131.

PETITIONER'S CONTENTIONS

12. The property's total assessment for each year under appeal is excessive. In an effort to support this argument, the Petitioner offered a "Broker Opinion of Value" and evidence regarding the sale of the subject property. *Higgins argument; Pet'r Ex. C, D, E.*
13. The "Broker Opinion of Value" was prepared by Terri Brenner of Casual LifeStyles Realty Inc. The opinion was prepared in November of 2014, prior to the listing of the subject property. Admittedly, the opinion is not compliant with the Uniform Standards of Professional Appraisal Practice (USPAP). In her market analysis, Ms. Brenner noted the downtown area where the subject property is located is "depressed and 75% vacant." According to Ms. Higgins, the area has "no employment" and "businesses are being torn down." *Higgins testimony; Pet'r Ex. C.*
14. In her opinion, Ms. Brenner listed several sales and listings of purportedly comparable properties. Ms. Higgins acknowledged that the sales and listings "fluctuate" and all are higher than the property's eventual selling price, but "they are also all lower than the current assessments." Ms. Brenner determined that the vacant sale price range for the subject property should be "between \$170,000 and \$210,000." *Higgins argument; Pet'r Ex. C.*
15. Based on the opinion of value, the subject property was listed for \$210,000. It is not entirely clear when the property was listed or for how long, but Ms. Higgins stated it was listed for "one listing cycle." No offer was made on the property because the only interested party, Madison County Community Health Centers, Inc., thought the asking price was excessive. *Higgins testimony.*
16. Eventually the property "went to auction." When questioned, Ms. Higgins stated she was unsure as to the specifics of the auction, including how it was advertised, conducted or how many bidders were in attendance. The only interested bidder was Madison County Community Health Centers, Inc. Because there was no reserve, the property was

acquired for \$107,500. The purchase agreement was signed on July 31, 2015, and the sale closed on January 15, 2016. *Higgins testimony; Pet'r Ex. D, E.*

RESPONDENT'S CONTENTIONS

17. The Respondent accepted the burden of proof and conceded the total assessment should be reduced to the 2010 level of \$234,800 for each year under appeal. The burden then shifts to the Petitioner to prove they are entitled to any further reduction, but the Petitioner failed to meet that burden. *Cusimano argument.*
18. The Petitioner's evidence is flawed. For several reasons, the auction sale does not establish market value. First, Ms. Higgins testified there was no reserve. According to IAAO standards, a reserve is important in determining whether a sale represents market value. Additionally, neither the sale listing nor the auction advertisement is part of the record and for this reason "we don't know a lot about what went on with that auction." Finally, the sale "closed in 2016" well after the valuation dates in question and there is nothing in the record relating the sale price back to the relevant valuation dates. *Cusimano argument (referencing Pet'r Ex. C, D); Resp't Ex. 1.*
19. The Petitioner's "Broker Opinion of Value" is also flawed. First, the "opinion" is not USPAP compliant. Additionally, only one sale listed in the "opinion" was "anywhere near" the auction price, most of the properties sold for "a much higher price." *Cusimano argument (referencing Pet'r Ex. C).*

BURDEN OF PROOF

20. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

21. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
22. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
23. Here, Mr. Cusimano conceded the Respondent has the burden of proof because the assessment increased by more than 5% from 2010 to 2011. Further, he acknowledged that each year under appeal should revert to the 2010 total assessment of \$234,800. But the Petitioner sought an even lower value. According to Ind. Code § 6-1.1-15-17.2(b) the Petitioner has the burden of proving it is entitled to any further reduction in the assessments.

ANALYSIS

24. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing

officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

25. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2011-2014 assessments, the assessment and valuation dates were March 1 of each respective year. *See* Ind. Code § 6-1.1-4-4.5(f).
26. As discussed above, the Respondent accepted the burden of proof. Additionally, the Respondent conceded each year under appeal should revert back to the 2010 total assessment of \$234,800. The Board will accept both concessions. Accordingly, the Petitioner is entitled to have each year under appeal reduced to \$234,800. However, the Petitioner sought a further reduction in the assessment. The Petitioner has the burden of proving that lower value. Therefore, the Board turns to the Petitioner's evidence.
27. It is not entirely clear what total assessment the Petitioner is seeking, but the Board will assume the Petitioner is relying on the auction price of \$107,500 for each year under appeal. Often, the sale of a subject property can be probative evidence of its market value-in-use. However, it is not the case in this instance.
28. First and foremost, the purchase agreement related to the auction was signed in July of 2015, but did not close until January of 2016. These dates are too far removed from the valuation dates in question to be probative. Further, the Petitioner failed to relate the sale price back to any of the specific valuation dates.
29. Even if the sale had been timely, there is insufficient evidence to conclude that the sale price is reflective of the property's market value-in-use. While Ms. Higgins testified that the property was, at some point, listed for sale by a realtor, the property ultimately sold at an auction. While an auction sale does not automatically render a sale price invalid, it

creates concerns as to whether a property was sufficiently exposed to the open market such that the resulting sale price reflects the market. In this case, the sale of the property does not appear to meet the conditions of a market value sale. As explained in the Manual, market value is:

[T]he most probable price, as of a specified date, in cash, or terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell *after reasonable exposure in a competitive market under all conditions requisite to a fair sale*, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming neither is under undue duress.

MANUAL at 5-6 (emphasis added).

30. Here, the Petitioner's evidence fails to convince the Board the auction price accurately reflects the property's market value-in-use. The record lacks any evidence regarding the dates or length of time the property was listed on the open market. Further, there is no evidence regarding how the auction was advertised, the bidding process, or the attendance. Additionally, Ms. Higgins testified that there was no reserve or minimum bid. For all of these reasons, the auction sale price is not probative of the property's value on any of the assessment dates in question.
31. The Petitioner also introduced a "Broker Opinion of Value." While the Petitioner did not affirmatively state the assessments in question should be based on the "opinion's" indicated value, the Board will still examine it. The "opinion" was prepared by realtor Terri Brenner, who concluded the value should be "between \$170,000 and \$210,000" as of November 2014.
32. This "opinion" lacks probative value. First and foremost, Ms. Higgins admitted it is not USPAP-compliant. Moreover, in an apparent attempt to utilize the sales-comparison approach to value, Ms. Brenner did not follow generally accepted appraisal principles.
33. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined.

Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- 34. Here, the “opinion” lacks any discussion of the comparability of the properties, and lacks any explanation of how any differences affect their values. Accordingly, the “opinion” lacks probative value.
- 35. For these reasons, the Petitioner failed to make a case for any further reduction in the assessments.

SUMMARY OF FINAL DETERMINATION

- 36. For the 2011, 2012, 2013 and 2014 assessments, the Respondent accepted the burden of proof and conceded to lower the total assessment to the 2010 level of \$234,800. The Petitioner sought an even lower value, but failed to make a case for any further reduction.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

Listing of parcels, petitions, and appealed assessments

Parcel	Petition	Year	Land	Impr.	Total
48-05-24-101-123.000-022	48-022-11-1-4-82437-15	2011	\$6,800	\$1,100	\$7,900
	48-022-12-1-4-20517-15	2012	\$5,400	\$0	\$5,400
	48-022-13-1-4-20509-15	2013	\$5,400	\$0	\$5,400
	48-022-14-1-4-20631-15	2014	\$5,400	\$0	\$5,400
48-05-24-101-119.000-022	48-022-11-1-4-82438-15	2011	\$5,300	\$247,700	\$253,000
	48-022-12-1-4-20518-15	2012	\$4,200	\$234,500	\$238,700
	48-022-13-1-4-20510-15	2013	\$4,200	\$235,800	\$240,000
	48-022-14-1-4-20632-15	2014	\$4,200	\$235,800	\$240,000
48-05-24-101-118.000-022	48-022-11-1-4-82436-15	2011	\$2,300	\$0	\$2,300
	48-022-12-1-4-20516-15	2012	\$1,800	\$0	\$1,800
	48-022-13-1-4-20508-15	2013	\$1,800	\$0	\$1,800
	48-022-14-1-4-20630-15	2014	\$1,800	\$0	\$1,800